Office Supreme Court, U.S.
FILED
SEP 3 1965
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1965.

No. 398.

JOHN C. DOYLE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITIONER'S REPLY BRIEF.

MOSES KRISLOV,
566 Hanna Bldg.,
Cleveland, Ohio 44115,

ARTHUR H. CHRISTY,
CARL F. TRUNK, JR.,
30 Rockefeller Plaza,
New York, N. Y. 10020,
Counsel for Petitioner Doyle.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—PHONE: 621-5647

In the Supreme Court of the United States

OCTOBER TERM, 1965.

No. 398.

JOHN C. DOYLE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY BRIEF.

The Solicitor General's sole argument in opposition to the granting of a Writ of Certiorari herein rests upon the contention that the Petitioner is a fugitive,[1] and is grounded in *Eisler v. United States*, 338 U. S. 189. The per curiam opinion in *Eisler* was erected on the rule established by two aged cases,[2] under which doctrine the case was removed from the docket, and held in abeyance until the petitioner ceased to be a fugitive. *Eisler* was later dismissed without further explanation, 338 U. S. at 883.

It is suggested that *Eisler* should be limited to its peculiar facts. There, all possible action to extradite Eisler

---

[1] The Government styles its brief "Memorandum For The United States." Petitioner assumes that this is the brief in opposition to the granting of the Petition for Certiorari permitted by the rules to the Government; since a motion to dismiss a Petition for Certiorari is not permitted, and all objections such as raised in the Memorandum must be raised, if at all, in the brief in opposition; See Rule 24(2), Revised Rules of the Supreme Court of the United States.

[2] *Smith v. United States,* 94 U. S. 97; *Bonaham v. Nebraska,* 125 U. S. 692.

had been attempted and exhausted in the English courts without success. Eisler then fled to Poland, a Communist nation, where he had become a member of the Government. In the context of the situation, this Court held further proceedings were futile, and Mr. Justice Frankfurter, in separate dissent, urged that the case had in fact become moot. No extradition efforts have been made in this case and as stated in the Petition, Mr. Doyle is in Ottawa, Canada.

More in keeping with current thinking of this Court is the dissent of Mr. Justice Murphy in *Eisler* (at 193). The matter to be considered is the context of the question presented by the Petition, i.e. the worthiness of the appeal urged to this Court. If the Petition for Certiorari is meritorious it should be granted, and the conviction reversed. If the question raised is without merit, certiorari should be denied or (if granted) the judgment thereafter affirmed, cf., dissent of Mr. Justice Jackson in *Eisler* at p. 195. It is the United States of America and our constitutional standards which are at stake here, not merely the fugitive status of a defendant. As Mr. Justice Murphy says (*Eisler* at 194):

> "Law is at its loftiest where it examines claimed injustice even at the instance of one to whom the public is bitterly hostile * * *. We should not permit an affront of this sort to distract us from the performance of our Constitutional duty."

cf., dissent by Mr. Justice Black concurred in by Mr. Justice Douglas in *National Union v. Arnold,* 348 U. S. 43.

The importance of the questions to be decided here as raised by the petition for certiorari is paramount. A failure, or refusal of this Court to squarely meet the issues grounded solely on the fugitive status of a petitioner tends to lower the esteem in which our judicial process is held

and ultimately works to the greater detriment of our Nation.[3]

Mr. Justice Frankfurter's argument that the case is rendered moot because any order issued might be nugatory fails in the light of Mr. Justice Murphy's superior argument that the conclusion simply does not necessarily follow. The fact that an order may prove to be moot, does not *ipso facto* render it such.

The issues raised by the petition for certiorari are vital and important questions. The petition should not be dismissed therefore, but should be granted.

Respectfully submitted,

MOSES KRISLOV,
566 Hanna Bldg.,
Cleveland, Ohio 44115,

ARTHUR H. CRISTY,
CARL F. TRUNK, JR.,
30 Rockefeller Plaza,
New York, New York 10020,
Counsel for Petitioner Doyle.

---

[3] *In re Thompson*, 213 F. Supp. 377, suggests that *Eisler* is obviated when, as here, there is also a fine imposed, which can be satisfied by attachment of assets. See also *In re Stern*, 235 F. Supp. 683.